

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: RAJEEV KUMAR AGARWAL, WHOLE TIME MEMBER**

ORDER

**UNDER REGULATION 28(2) READ WITH REGULATION 38(2) OF THE
SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES)
REGULATIONS, 2008**

**In respect of Alka Securities Ltd. (SEBI Registration No. INB230629237 and INF230629237)
(PAN: AAACA4875E)**

Dates of hearing: July 18, 2012 and September 5, 2012

Appearances:

For Alka Securities Ltd.: 1. Mr. Mahendra Pandey, Compliance Officer,
2. Mr. Tejas Pandey, Director, and
3. Mr. Rahul Pandey.

For SEBI: 1. Mr. Santosh Kumar Shukla, Joint Legal Adviser
2. Mr. B Rajendran, General Manager
3. Mr. Biswajit Choudhury, Dy. General Manager
4. Mr. Nirdosh Ranjan Minz, Assistant General Manager
5. Mr. Amitesh kumar, Assistant Legal Adviser
6. Mr. Mitrajeet Dey, Assistant Legal Adviser, and
7. Mr. Siddharth Dachalwal, Manager.

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1. Alka Securities Limited ('ASL') is a stock broker registered with Securities and Exchange Board of India ('SEBI') and is also a listed company. SEBI had conducted investigation in the trading in the scrip of ASL for the period November, 2008 to March, 2009. Based on the preliminary findings of the investigation, SEBI, vide an *ad interim ex-parte* order dated July 28, 2009 had *inter alia* issued various directions to ASL. One of the directions to ASL was not to take fresh clients, with immediate effect, until further orders. The directions issued in the said *ad interim ex-parte* order against ASL were confirmed by SEBI vide order dated October 16, 2009.
 2. National Stock Exchange ('NSE') vide e-mail dated April 19, 2010 informed SEBI that ASL was observed to have traded for two new clients, namely Mr. Jayant Shah and Mr. Anna Adhikrao Gaikwad on April 06, 2010 and April 07, 2010. NSE also informed SEBI that ASL had submitted to it that the new clients for whom trades were done were inadvertently done on NSE instead of Bombay Stock Exchange Ltd. ('BSE'). ASL had further submitted that the clients were existing clients registered with its sister concern company and stock broker namely Mahesh Kothari Shares & Stock Brokers Pvt. Ltd. ('MKSSB') and provided their KYC details to NSE. It

was, thus, *prima facie* found that despite the SEBI orders dated July 28, 2009 and October 16, 2009 prohibiting ASL from taking fresh clients, it had taken fresh clients. In view of this, SEBI vide another *ad interim ex parte* order dated April 29, 2010 had prohibited ASL from buying, selling or otherwise dealing in securities on behalf of its clients, in any manner, whatsoever, either directly or indirectly, until further orders. The *ad interim ex parte* order dated April 29, 2010 also advised ASL to file its objections if any, to the order, within 15 days and if it so desires, avail an opportunity of personal hearing before SEBI. ASL vide letter dated May 03, 2010 had filed the objections to the said *ad interim ex parte* order.

3. Meanwhile, the aforesaid order April 29, 2010, on appeal, was set aside by the Hon'ble Securities Appellate Tribunal ('SAT'), vide order dated May 10, 2010 and SEBI was directed to pass fresh order in accordance with law after hearing ASL. Pursuant to this, ASL was afforded an opportunity of hearing on May 17, 2010, when the authorized representatives appeared on behalf of ASL and made submissions. As further materials were brought out during the follow up done to ascertain the *bona fide* of the contentions of ASL, a notice dated July 09, 2010 was issued to ASL asking it to show cause as to why suitable directions, under Sections 11, 11(4) and 11B of the SEBI Act, 1992 should not be passed against it. This show cause notice was disposed of by SEBI vide order dated July 01, 2011 without considering the matter on merits with the finding that in the facts and circumstances of the case the appropriate action would be to initiate an enquiry proceeding against ASL under the provisions of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 ('Intermediaries Regulations').
4. Accordingly, proceedings under the Intermediaries Regulations was initiated against ASL wherein the Designated Authority ('DA') appointed in the matter found ASL guilty of violating SEBI orders dated July 28, 2009 and October 16, 2009 for taking fresh clients and thus provisions of Clause A(1) and Clause C(6) of Code of Conduct for stock brokers under schedule-II read with regulation 7 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 ('Stock Broker Regulations'). The DA submitted the Report dated December 30, 2011 recommending suspension of the certificate of registration of the noticee for a period of two years.
5. In view of the aforesaid, a show cause notice dated January 16, 2012 ('SCN') under Intermediaries Regulations was issued to ASL ('the noticee'), asking it to show cause as to why action as recommended by the DA or a higher penalty should not be imposed on the noticee. A copy of the Report was also furnished to the noticee along with the SCN.
6. The noticee vide its letter dated February 07, 2012 sought an extension of one week to reply but no reply was filed thereafter. Further, an opportunity of personal hearing was granted to the

noticee before me on various dates. The hearing was finally held on July 18, 2012 and September 05, 2012. On the scheduled dates, Mr. Mahendra Pandey and Mr. Rahul Pandey appeared before me and made submissions. The noticee also filed a written submission dated September 20, 2012. The noticee has, *inter alia*, submitted as under:

- (i) It denied all the allegations made out in the enquiry report.
- (ii) MKSSB is a member of BSE since 1986 and is also a promoter of ASL. ASL is not a member of BSE, but only of NSE. The management of both of companies is the same, so are the office premises, staff, clients, client codes, infrastructure and trading software. Moreover, the clients are required to fill the same KYC with both stock brokers who are sister concerns and are thus same in all respects, except their membership on BSE and NSE; respectively. Hence, ASL and MKSSB should be considered as the same company in respect of their daily operations.
- (iii) In the Report the DA has *inter alia* relied upon the submissions made by its manager Mr. Sadanand Mishra before him on December 16, 2011 when he admitted that the noticee had *prima facie* violated the SEBI orders. It is submitted that Mr. Sadanand Mishra was instructed to appear before the Designated Authority on December 16, 2011 on behalf of the noticee to request for a short adjournment and to ask for time to make written submission. Mr. Mishra was not authorized to make any statement before the DA.
- (iv) Mr. Anna Adhikrao Gaikwad and Mr. Jayant Shah were registered with MKSSB on BSE since 2007 and they were trading only on BSE. At that time the NSE documentation was also taken from them for registration and the same code numbers were allotted to them for trading on NSE also but their client codes were not uploaded on NSE. They had never previously traded on NSE. On March 30, 2010 when one of its dealer was on leave, a new dealer, Mr. Mehul, who was at the time a valid NCFM certificate holder, was on the dealing desk and he had erroneously punched the trade of Mr. Anna Adhikrao Gaikwad and Mr. Jayant Shah in NSE.
- (i) This is a case of human error and that the trades were wrongly punched in NSE. It denied that the management had submitted any wrong documents knowingly. The record was of 2007 and it was produced in the year 2010.
- (ii) The total transactions on behalf of two clients was less than ₹1,00,000 and there was neither any motive nor it had received any benefit for doing these transactions.

(iii) It is running the business under the rules and regulations of SEBI and the respective exchanges and it has always diligently followed the rules for close to two decades. Thus, the error was unintentional and not any kind of willful violation.

7. I have carefully considered the enquiry report, the SCN, the oral as well as written submissions of the noticee and other material available on record. The only issue for my consideration in the matter is whether the noticee dealt in securities on behalf of the fresh clients in contravention of SEBI orders dated July 28, 2009 and October 16, 2009 and violated provisions of Clause A(1) and Clause C(6) of Code of Conduct for stock brokers under Schedule-II read with regulation 7 of Stock Brokers Regulations.
8. I note that the noticee has admitted its dealing in securities on NSE on behalf of two clients, namely Mr. Anna Adhikrao Gaikwad and Mr. Jayant Shah after the orders dated July 28, 2009 and October 16, 2009 of SEBI. The details of trades executed by the noticee on behalf of these clients are as under:

Client code	Client Name	Trade Date	Symbol	Order No	Trade No	Traded Quantity
A0015	ANNA ADHIKRAO GAIKWAD	30-Mar-10	MRPL	2010033034303851	2010033033854880	500
J0010	JAYANT SHAH	6-Apr-10	BRANDHOUSE	2010040600646523	2010040600292397	45
J0010	JAYANT SHAH	6-Apr-10	BRANDHOUSE	2010040600646523	2010040600292398	1
J0010	JAYANT SHAH	6-Apr-10	BRANDHOUSE	2010040600646523	2010040600292399	200
J0010	JAYANT SHAH	6-Apr-10	BRANDHOUSE	2010040600646523	2010040600292400	4
J0010	JAYANT SHAH	6-Apr-10	BRANDHOUSE	2010040600646523	2010040600293470	470
J0010	JAYANT SHAH	6-Apr-10	BRANDHOUSE	2010040600646523	2010040600293471	280
J0010	JAYANT SHAH	6-Apr-10	BRANDHOUSE	2010040603435029	2010040602267372	1,000.00
A0015	ANNA ADHIKRAO GAIKWAD	7-Apr-10	MRPL	2010040733534162	2010040733410987	25

9. I note from records that on March 30, 2010, when the noticee executed buy order for a client namely Mr. Anna Adhikrao Gaikwad having client code A0015, the client details for the code A0015 were not available with NSE. The noticee had uploaded the Unique Client Code ('UCC') details of this client on April 03, 2010 on NSE. When NSE sought explanation from the noticee on April 05, 2010 with regard to dealing for fresh client, in violation of the SEBI orders, the

noticee, on April 6, 2010, informed NSE that the client was an old client. Thereafter, NSE had sought the KYC details of the said client from ASL. I note that while this inquiry by NSE was ongoing, the noticee executed buy and sell orders on behalf of another client namely Mr. Jayant Shah on April 06, 2012. Further, on April 07, 2010, the noticee again dealt for the client Mr. Anna Adhikrao Gaikwad. It is noted that the noticee vide letter dated April 07, 2010 furnished to NSE the KYC form of Mr. Anna Adhikrao Gaikwad registered with MKSSB along with the BSE UCC.

10. Similarly, the client code details for Mr. Jayant Shah were not uploaded on NSE when the noticee dealt in securities on his behalf and the same was uploaded on April 13, 2010. When the NSE inquired from the noticee about violation of SEBI orders by its trades on behalf of this client, the noticee on April 15, 2010 replied that its dealings on behalf of this client was due to human error and mistake of dealer and it came to know after market hours at the time of bill process. The noticee had, along with the said explanation, provided to NSE the KYC details of this client registered with MKSSB on BSE.
11. I further note that the codes A0015 and J0010 assigned to Mr. Anna Adhikrao Gaikwad and Mr. Jayant Shah, respectively, were not available on the client master data provided by ASL to SEBI during the investigation. ASL had confirmed that the two clients were trading on BSE through MKSSB. ASL had also stated that the KYC forms for trading on NSE were also executed by the clients, though they never started trading on NSE and were trading only on BSE and therefore the details were not uploaded in back office system of ASL.
12. I find that ASL and MKSSB are two different entities having separate membership at NSE and BSE, respectively, and two separate registrations to act as a stock broker from SEBI. Therefore, the clients of one cannot be automatically treated as clients of the other. I also find that when NSE had sought explanation from ASL regarding its trading on behalf of the said two clients, it instead of providing the KYC documents of these clients registered with it, furnished the KYC documents of these clients registered with MKSSB. I, therefore, find that Mr. Anna Adhikrao Gaikwad and Mr. Jayant Shah were not the clients of ASL but were the clients of MKSSB when the above mentioned trades were executed by the noticee on their behalf.
13. I further find that once NSE had sought explanation on April 05, 2012 from ASL for trading on March 30, 2010 on behalf of client Mr. Anna Adhikrao Gaikwad, the noticee should have been cautious for dealing on behalf of such clients. ASL, however, dealt in securities for the client Mr. Jayant Shah on April 06, 2010 in 7 trades. Further, ASL again dealt in securities on behalf of the same client Mr. Anna Adhikrao Gaikwad, on April 07, 2010 when NSE was still making inquiries. The contention of the noticee that it had dealt in shares on NSE due to human error of

dealer does not hold merit in view of the fact that when the inquiry by NSE regarding its trading on behalf of these clients was still ongoing, the noticee had again traded for the same client which shows that it cannot be human error.

14. During the hearing held on May 17, 2010 pursuant to SAT order, ASL had submitted the original KYC forms and agreements of the said two clients. I note from these documents that the date of agreement between ASL and Mr. Anna Adhikrao Gaikwad is December 14, 2007 and the date of agreement between ASL and Mr. Jayant Shah is February 20, 2008. However, the various differences and discrepancies were observed on comparison of the original documents in respect of Mr. Anna Adhikrao Gaikwad furnished on May 17, 2010 and copies thereof submitted by ASL to NSE, SEBI and SAT on earlier occasions. This raised doubts about the veracity and correctness of these original documents and copies thereof.
15. In view of the aforesaid, SEBI vide letter dated May 28, 2010 sought details from Additional Controller of Stamps, General Stamp Office, Mumbai, regarding the genuineness of the stamp papers bearing serial nos. CX551050 and CX257705 submitted by ASL. The Stamp Office stated that these stamp papers were received by the General Stamp Office, Fort, Mumbai from the Nasik Press only on February 22, 2010 and they were released to the vendor on April 12, 2010. These stamp papers were sold by the vendor only on April 15, 2010 and April 16, 2010 to a third party other than ASL. Comparison of key dates and the names to whom these stamp papers were issued as per the serial number of the stamp papers submitted by ASL and General Stamp Office is as under:

	Name & Serial No.		Name & Serial No.	
	Mr. Jayant Shah		Mr. Anna Adhikrao Gaikwad	
	CX551050		CX257705	
	Claim of ASL	General stamp office	Claim of ASL	General stamp office
Date of issue by the general stamp office to the vendor	February 8, 2008	April 12, 2010	October 5, 2007	April 12, 2010
Date of sale by the stamp vendor	February 12, 2008	April 16, 2010	October 10, 2007	April 15, 2010
Name of the entity to which it was sold	ASL	Jiya Trade	ASL	Raj Trade

16. From the above details, it is clear that the KYC forms and the agreements submitted by ASL indicating that the said clients namely, Mr. Anna Adhikrao Gaikwad and Mr. Jayant Shah were the clients of ASL since 2007 and 2008 were fabricated and false. I find that these clients were not the existing clients of ASL from 2007 and 2008, as claimed by ASL and the documents were subsequently created to cover up its attempt to trade on behalf of these clients in disregard of SEBI orders dated July 28, 2009 and October 16, 2009.
17. In this regard, the noticee has submitted that while purchasing stamp papers from the vendor no one goes for its genuineness and relies on the vendor. I do not find merit in this submission of the noticee as it has already been proved from the letter dated May 31, 2010 of General Stamp Office that these stamp papers were received by the General Stamp Office, Fort, Mumbai from the Nasik Press only on February 22, 2010 and they were released to the vendor on April 12, 2010. Thereafter, those stamp papers were sold by the vendor only on April 15 and 16, 2010 to a third party and not to ASL. In my view, it is impossible to use the stamp papers issued/sold in 2010 for an agreement executed in 2007 and 2008.
18. From the above stated facts, it is clear that the noticee had traded on behalf of Mr. Anna Adhikarao Gaikwad and Mr. Jayant Shah on March 30, 2010, April 06, 2010 and April 07, 2010 on NSE despite the SEBI orders dated July 28, 2009 and October 16, 2009 directing the noticee not to take fresh clients were in force. This callous attitude of the noticee is palpable from the fact that the noticee had submitted fabricated and false documents as explained in detail in the aforesaid paragraphs. I, therefore, agree with the findings of the DA that the noticee had traded on behalf of two new clients namely Mr. Anna Adhikarao Gaikwad and Mr. Jayant Shah violating SEBI orders dated July 28, 2009 and October 16, 2009 and thereby violating Clause A(1) and Clause C(6) of Code of Conduct for stock brokers under Schedule-II read with regulation 7 of Stock Brokers Regulations.
19. Being a registered stock broker, the noticee is expected to take due care and diligence in all its dealings and should act in a professional manner. In this case, the noticee has acted in utter disregard of SEBI directions and adopted fraudulent activities to cover- up its violation. Such violation, in my view, should be dealt with severally and strictly. Further, the noticee was involved in multiple defaults and violations and different enforcement actions have been taken against it by SEBI. In the facts and circumstances of this case, I am of the view that suspension of certificate of registration of the noticee for a period of two years, as recommended by the Designated Authority, would be commensurate with the violations found hereinabove.

20. I, therefore, by virtue of the powers conferred upon me in terms of section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby suspend the certificate of registration of the stock broker namely Alka Securities Ltd. (SEBI Registration No. INB230629237 and INF230629237) for a period of two years.
21. This order shall come into force on expiry of twenty one days from the date of this order. A copy of this order shall be sent to the NSE and the Depositories for necessary action.

DATE: October 8th, 2012
PLACE: MUMBAI

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA